SOUTHERN PACIFIC COMPANY *v.* INTERSTATE COMMERCE COMMISSION.

CERTIFICATE OF THE JUDGES OF THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF CALIFORNIA.

No. 275. Argued October 12, 13, 1909.—Decided December 6, 1909.

On authority of preceding case *held* that under § 1 of the expediting act of February 11, 1903, c. 544, 32 Stat. 823, the case, although turning only on a point of law, cannot be certified to this court, in absence of any judgment, opinion, decision, or order determinative of the case below.

THE facts are stated in the opinion.

Mr. Maxwell Evarts, with whom *Mr. F. C. Dillard*, *Mr. W. W. Cotton*, *Mr. P. F. Dunne* and *Mr. Robert S. Lovett* were on the brief, for the Southern Pacific Company.

Mr. Wade H. Ellis, Assistant to the Attorney-General, with whom *Mr. Luther M. Walter* and *Mr. Edwin P. Grosvenor*, Special Assistants to the Attorney-General, were on the brief, for the Interstate Commerce Commission.

MR. CHIEF JUSTICE FULLER delivered the opinion of the court.

This case comes here upon a certificate of the three judges of the Circuit Court for the Northern District of California under § 1 of the expediting act of February 11, 1903, c. 544, 32 Stat. 823, as construed by them.

The suit was brought by the railroad companies in the Circuit Court to restrain the enforcement of an order of the Interstate Commerce Commission, which established a maxi-

mum rate for the transportation of rough green fir lumber from points in the Willamette Valley, Oregon, to San Francisco. The case came on for argument before the three Circuit Judges upon the demurrer of the commission to the amended bill of complaint, to which was attached the opinion and order of the commission.

The Circuit Judges certified the whole case, and it comes here without opinion, decision or assignment of errors.

Upon the grounds stated in No. 339, *Baltimore & Ohio Railroad Company* v. *Interstate Commerce Commission, ante*, p. 216, the certificate is dismissed and the case remanded to the Circuit Court with directions to proceed therein in conformity with law.

Ordered accordingly.